Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition of Verizon Telephone Companies for) WC Docket No. 06-172
Forbearance Pursuant to 47 U.S.C. section 160 (c))
In The Boston, Metropolitan Statistical Area.)

COMMENTS OF THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

The New Hampshire Public Utilities Commission ("NHPUC") files these comments in response to Verizon's request for forbearance, pursuant to 47 U.S.C. §160, in those parts of the Boston Metropolitan Statistical Area ("Boston MSA") located within the State of New Hampshire. Specifically the New Hampshire counties of Strafford and Rockingham are considered part of the Boston MSA. These areas are generally more sparsely populated than the rest of the Boston MSA contained within the Commonwealth of Massachusetts. Competitors in Strafford and Rockingham counties do not currently offer comparable competitive alternatives to service by Verizon New Hampshire, the local incumbent carrier ("ILEC"), to those offered in Massachusetts. Further, the sale of Verizon's wireline business in Vermont, New Hampshire and Maine to FairPoint Communications raises questions concerning whether FairPoint will be a successor with regard to Verizon's wholesale obligations in New Hampshire. Accordingly, the Federal Communications Commission ("Commission") should decline at this time to consider forbearance pursuant to 47 U.S.C. §160 in the two New Hampshire counties located in the Boston MSA.

I. Legal Standard For Forbearance under 47 USC § 160

In considering Verizon's petition for forbearance the Commission must examine the state of competitive telecommunications within the geographic areas identified in the petition.

47 U.S.C. §160 (a) provides:

Regulatory flexibility

Notwithstanding § 332(c)(1)(A) of this title, the Commission shall forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that -

> (1) enforcement of such regulation or provision is not necessary to ensure that charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service *are just and reasonable and are not unjustly or unreasonably discriminatory;*
>
> (2) enforcement of such regulation or provision or regulation is not necessary for the *protection of consumers*; and
>
> (3) forbearance from applying such provision or regulation is consistent with the *public interest.* (emphasis added)

47 U.S.C. § 160 (b) further explains:

Competitive effect to be weighed

> In making the determination under subsection (a)(3) of this section, the Commission shall consider whether forbearance from enforcing the provision or regulation will *promote competitive market conditions*, including the extent to which such forbearance will *enhance competition among providers of telecommunications services*. If the Commission determines that such forbearance will promote competition among providers of telecommunications services that determination may be the basis for a Commission finding that forbearance is in the public interest. (emphasis added)

II. Competition In Strafford County And Rockingham County Is Not Sufficient To Support Forbearance Pursuant To 47 U.S.C. Section 160

In its Forbearance Petition ("Petition"), Verizon discusses competition for both mass-market and enterprise (business) customers in the Boston Metropolitan Statistical Area (Boston MSA). The data and statistics cited in the Petition do not apply uniformly to the entire Boston MSA. Further, data collected by the NHPUC in New Hampshire suggests that telecommunications services in Strafford and Rockingham counties may not be sufficiently competitive to constrain Verizon's pricing for telecommunications services, nor to protect consumers, particularly in the enterprise arena. As a result, NHPUC urges the Commission to decline at this time to forebear from regulating Verizon's services in the New Hampshire counties of Strafford and Rockingham.

There are 26 Verizon wire centers in Rockingham and Strafford counties. According to information reported by Verizon as of December 31, 2006, eleven of these wire centers, including Atkinson, Barrington, Candia, Deerfield, Hampstead, Kingston, Milton, Milton Mills, Northwood, South Hampton Locality and Somersworth, had no collocators. Verizon reported only one collocator in five of the remaining wire centers in Epping, Farmington, Newmarket, Raymond and Seabrook.

In the remaining ten wire centers, only three were listed by Verizon on its list of wire centers with sufficient fiber-based collocators to be considered unimpaired for dark fiber and DS3 transport. Of these, the NHPUC found that only one actually had three fiber-based collocators; accordingly, Portsmouth is the only New Hampshire wire center that is not a Tier III wire center in Rockingham and Strafford counties. Portsmouth is Tier 2 for transport. No wire centers in the New Hampshire portion of the proposed Boston MSA reach the TRRO-defined criteria to be considered no longer impaired without access to high capacity loops.

While there is some competition in the enterprise market in Strafford and Rockingham counties, virtually all of that competition is supported by Verizon's facilities: special access, UNEs, UNE-P or resale. Only one CLEC has established its own facilities-based competition for the enterprise market, and it has done so in a very limited arena.

The distance between wire centers in New Hampshire is great, and transport from Verizon is vital to competitors serving enterprise customers. We encourage the Commission to use its wire center test for competition, i.e., the number of fiber-based collocators and the number of business lines, as a meaningful test for purposes of considering forbearance requests as well. Given the economic hurdles to the development of self-deployed facilities-based competition, including transport, in New Hampshire, eliminating transport provided by Verizon could reduce competition among providers. Furthermore, among the issues within the scope of the NHPUC's ongoing investigation into access to telephone poles, NHPUC Docket DM 05-172, is the extent to which access to poles, and the related costs for that access, may be a barrier to meaningful competition in the transport arena. New Hampshire is a rural state, and the New Hampshire counties in the proposed Boston MSA are a diverse mix of suburban and rural areas. Forbearance from § 251 UNEs could undermine the competition that currently exists in less than a handful of wire centers, and, since the CLECs operating from that base of competition would have to invest heavily in alternative sources of service to maintain their existing customer base, the promise of enterprise competition, particularly small business competition, for the rural New Hampshire towns in the Boston MSA may never be realized.

III Forebearance is not appropriate in New Hampshire's Strafford and Rockingham Counties in light of Verizon's recent announcement of a Sale of its New Hampshire, Vermont and Maine Wireline Businesses to FairPoint Communications, Inc.

On January 31, 2007, Verizon and FairPoint Communications ("FairPoint") filed with the NHPUC a joint petition seeking approval of a series of transactions that, if consummated, would result in FairPoint (through subsidiaries) acquiring the current Verizon New England (Verizon NE) franchise to provide wireline telecommunications services in New Hampshire and owning the network Verizon NE currently uses to provide those services. The transaction is targeted for completion within 12 months and includes Verizon's switched and special access lines in the three states, as well as its Internet service, enterprise voice customer premises equipment accounts, and long-distance voice and private line customer accounts (for customer private lines with beginning and ending points within the three states) that Verizon served in the region before the 2006 merger with MCI, Inc. The transaction does not include the services, offerings or assets of Verizon Wireless, Verizon Business (former MCI), Federal Network Systems LLC, Verizon Network Integration Corp., Verizon Global Networks, Inc., Verizon Federal, Inc., or any other Verizon businesses in these states.

The proposed sale of Verizon's wireline business may change the competitive telecommunications market in New Hampshire. The proposed transfer also raises questions concerning whether any Commission decision regarding forbearance for Verizon under 47 USC § 160 will apply to FairPoint pursuant to either 47 U.S.C. § 153(4) or § 251(h) as a successor to Verizon. Given the uncertainty surrounding the competitive and regulatory environment following the asset transfer to FairPoint the Commission should decline to consider forbearance at this time pursuant to 47 U.S.C. § 160 in the New Hampshire counties of Strafford and Rockingham.

Finally, the fact that Verizon has decided to retain its Massachusetts wireline business while seeking to dispose of its Vermont, New Hampshire and Maine wireline businesses supports a conclusion that there are fundamental differences between the more urban telecommunications markets in Massachusetts and the more rural markets in New Hampshire and surrounding northern New England states.

CONCLUSION

For all of the reasons discussed above, the New Hampshire Public Utilities Commission urges the Federal Communications Commission to decline to consider at this time Verizon's request for forbearance as it applies to the counties of Strafford and Rockingham, New Hampshire.

Respectfully submitted,

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